REMARKS

I. General

Claims 26, 29 – 39 and 48 are presently pending in the application, but claim 34 has been withdrawn from consideration. The issues in the current Office Action are as follows:

- Claims 31, 32 and 36 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

- Claims 26, 29 – 32, 35, 39 and 48 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2001/0044592 to Li et al. (hereinafter, "Li"), and further in view of U.S. Patent No. 4,982,742 to Claude (hereinafter, "Claude").

- Claim 33 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Li and Claude as applied to claim 29, and further in view of U.S. Patent Publication No. 2002/0173473 to Tapper (hereinafter, "Tapper").

- Claims 36 – 38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Li and Claude as applied to claim 35, and further in view of U.S. Patent No. 5,860,957 to Jacobsen et al. (hereinafter, "Jacobsen").

Applicant appreciates the courtesy and professionalism extended by the Examiner thus far. Applicant hereby traverses the rejections and requests reconsideration and withdrawal in light of the amendments and remarks contained herein.

II. Applicant's Record Under M.P.E.P. § 713.04 of Interview with the Examiner

Applicant's attorney appreciates the Examiners' time and consideration in conducting the in-person interview of April 26, 2010. Applicant respectfully submits the following record of the interview under M.P.E.P. § 713.04.

The following persons participated in the interview: Examiner Shefali D. Patel, SPE Melba N. Bumgarner, John Brunner (attorney with Carpmaels & Ransford, a European law firm, acting as Applicant's representative), and Wayne Livingstone (reg.# 60,988). Applicant's attorney discussed claim 29 and the proposed amendments. It was agreed that that Li does not teach using alternating current for electrical stimulation and repair of tissue. Instead, Li teaches using electrical current to deliver pharmaceutical agents to tissue. As such, it was agreed that the limitation "passing alternating current to the treatment area via the electrodes for electrical stimulation and repair of said tissue and for constantly varying the amplitude of the alternating current", in claim 29, would overcome the current rejection of record. Applicant's attorney also asserted that Jacobsen does not teach the limitations of claim 36. Applicant's attorney agreed to file a Request for Continued Examination consistent with the proposed amendments.

III. Comments of Examiner's Interview Summary

The Examiner's summary notes that it was agreed that "Li et. al. does not teach 'electrical stimulation' only to treat the tissue." Emphasis added. To clarify, Applicant does not agree that Li teaches electrical stimulation to treat the tissue in addition to electrical stimulation for doing something else. Accordingly, this was not the point of distinction asserted by Applicant. The Applicant's position was and is that Li does not teach using electrical current itself for repair of tissue.

IV. Claim Amendments

Claim 29 has been amended to more clearly define the invention. The amendments are similar to the amendments proposed in the Interview Agenda. Support for these amendments may be found, at least, at page 8, lines 17 – 26 and page 16, lines 4 – 9. No new matter has been added.

V. Claim Rejections

A. 35 U.S.C. § 112 Rejection

Claims 31, 32 and 36 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. With respect to claim 31 and 36, the Examiner asserts that there is no antecedent basis for "the frequency." The Applicant respectfully disagrees because frequency is inherent to the alternating current. *See Bose Corp. v. JBL, Inc.*, 274 F.3d 1354, 1359, 61 USPQ2d 1216, 1218-19 (Fed. Cir 2001) (holding that recitation of "an ellipse" provided antecedent basis for "an ellipse having a major diameter" because "[t]here can be no dispute that mathematically an inherent characteristic of an ellipse is a major diameter"). Therefore, reciting "the frequency" in claims 31 and 36 is appropriate even though "a frequency" was never recited. With respect to claim 32, the Applicant has amended this claim to remove the "variation of frequency" limitation.

In sum, the current claims, as amended, are definite. Accordingly, the Applicant respectfully requests that the Examiner withdraw the rejection, under 35 U.S.C. § 112, of claims 31, 32 and 36.

B. 35 U.S.C. § 103(a) Rejection over Li and further in view of Claude

Claims 26, 29 – 32, 35, 39 and 48 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Li, and further in view of Claude. The question of obviousness is resolved on the basis of factual inquiries including: (1) scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) secondary considerations of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 15 – 17 (1966). The Applicant discusses the rejected claims below.

1. Independent claim 29

Claim 29, as amended, requires, "a control unit for passing alternating current to the treatment area via the electrodes and for constantly varying the amplitude of the alternating current to electrically stimulate and repair said tissue." Li in view of Claude does not teach

this limitation. Instead of teaching this limitation of claim 29, Li teaches using an alternating current to deliver pharmaceutical agents to tissue: "Methods for delivering different agents across a tissue utilizing an AC signal are provided. The methods can be utilized to deliver a number of different agents such as pharmaceutical agents, metal ions and nutrients." Paragraph [0018] (summarizing the Li invention). Therefore, Li's explicit objective is different from claim 29's requirement that the alternating current is passed to the treatment area for electrical stimulation and repair of the tissue and supports the nonobviousness of claim 29 over Li. Moreover, as noted above in the Record of Interview, the Examiners agreed that Li does not teach alternating current is used for electrical stimulation and repair of the tissue. Indeed, the Applicant submits Li is not a proper primary reference that can be used in the rejection of claim 29, as amended.

In sum, Li's device is not a device which can properly be the basis of an obviousness rejection of claim 29. Accordingly, the Applicant respectfully requests that the Examiner withdraw the rejection, under 35 U.S.C. § 103(a), of claim 29.

2. Dependent claims 26, 30 – 32, 35, 39 and 48

Dependent claims 26, 30 – 32, 35, 39 and 48 depend either directly or indirectly from independent claim 29, and thus inherit all of the limitations of claim 29. It is respectfully submitted that dependent claims 26, 30 – 32, 35, 39 and 48 are patent eligible at least because of their dependence from independent claim 29 for the reasons discussed above. Accordingly, Applicant respectfully requests the withdrawal of the 35 U.S.C. § 103(a) rejection of claims 26, 30 – 32, 35, 39 and 48.

C. 35 U.S.C. § 103(a) Rejection over Li and Claude and further in view of Tapper

Claim 33 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Li and Claude as applied to claim 29 above, and further in view of Tapper. Claim 33 depends from independent claim 29, and thus inherit all of the limitations of claim 29. It is respectfully submitted that dependent claim 33 is patentable at least because of its dependence from independent claim 29 for the reasons discussed above. Accordingly, Applicant respectfully requests the withdrawal of the 35 U.S.C. § 103(a) rejection of claim 33.

D. 35 U.S.C. § 103(a) Rejection over Li and Claude and further in view of Jacobsen

Claims 36 – 38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Li and Claude as applied to claim 35 above, and further in view of Jacobsen. Dependent claims 36 – 38 depend indirectly from independent claim 29, and thus inherit all of the limitations of claim 29. It is respectfully submitted that dependent claims 36 – 38 are patentable at least because of their dependence from independent claim 29 for the reasons discussed above. Moreover, dependent claims 36 – 38 recite limitations that the Examiner has hot shown to be taught by the applied art. Claim 36, for example, requires "the electronic circuitry comprises memory storing at least one program for determining the amplitude, frequency and waveform of alternating current supplied to the electrodes." The Examiner relies on Jacobsen for teaching this limitation. Specifically, the Examiner asserts that Jacobsen's disclosure of memory 52 "storing at lest one program of drug delivery schedules for the device" teaches the limitation of claim 36 at issue. However, a program of drug delivery schedules does not teach "at least one program for determining the amplitude, frequency and waveform of alternating current supplied to the electrodes."

In sum, the Examiner has not shown the applied art teaches all the limitations of claims 36 – 38. Accordingly, Applicant respectfully requests the withdrawal of the 35 U.S.C. § 103(a) rejection of claims 36 – 38.

VI. Conclusion

In view of the above, Applicant believes the pending application is in condition for allowance and respectfully requests favorable reconsideration. The fee of $405.00 set forth under 37 C.F.R. 1.17(e) for filing the accompanying Request for Continued Examination for a small entity will be paid by credit card. Please charge any additional fees required or credit any overpayment to Deposit Account No. 06-2380, under Order No. 51407/P029US/10605267 during the pendency of this Application pursuant to 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

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Respectfully submitted,

By _____

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